

# Sunset Review Report

CONTRACTORS STATE LICENSE BOARD

*Responses & Actions*



Prepared for the  
California Legislature's  
Joint Legislative Sunset Review Committee

October 1, 1999

(Revision of October 1998 Report)



## **Members of the Contractors State License Board**

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## MISSION

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***The Contractors State License Board shall protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction.***

*The Contractors State License Board  
will accomplish this by:*



*Ensuring that construction is performed in a safe, competent and professional manner through licensing of contractors and enforcement of the licensing laws.*



*Providing resolution to disputes that arise from construction activities.*



*Educating consumers so that they may make informed choices.*

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# **PART ONE**

## **CONTRACTORS STATE LICENSE BOARD**

### **BACKGROUND INFORMATION AND OVERVIEW**

#### **BACKGROUND AND DESCRIPTION OF THE BOARD AND THE REGULATED PROFESSION**

##### **History of the Board and Regulation of Contractors**

The Legislature established a Contractors License Bureau in 1929, under the Department of Professional and Vocational Standards<sup>1</sup> to protect the public from irresponsible contractors. In 1935, the mission and duties of the agency were placed under the auspices of a seven member Board. From 1960 through 1975, the Board was increased to thirteen members.

The legal and regulatory role of the Board has changed over the years since the Board's creation. Initially, applicants were not issued specific license classifications. Instead, applicants simply indicated the type of construction work that would be performed under the license, and the license was issued without any examination or experience requirements.

In 1938, the Legislature made it mandatory that applicants for contractors' licenses be examined for competence in their designated fields. By 1947, the Board had been given authority to establish experience standards and to adopt rules and regulations to affect the classification of contractors "*in a manner consistent with established usage and procedure as found in the construction business, and. . . limit[ing] the field and scope of operations of a licensed contractor to those in which he or she is classified and qualified to engage. . .*"

The mission of the Contractors State License Board (CSLB) is to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. The Contractors State License Board accomplishes this by:

- Ensuring construction is performed in a safe, competent and professional manner through licensing of contractors and enforcement of the licensing laws;
- Providing resolution to disputes that arise from construction activities; and

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<sup>1</sup> The Contractors State License Board is now under the Department of Consumer Affairs.

- Educating consumers so that they may make informed choices.

CSLB serves three primary user groups:

- Consumers of contracting services;
- General public; and
- Contractors.

### **Board Composition**

The Board presently comprises thirteen members. It has a public majority with seven public members and six professional members.

The details of the Board's composition are:

- Seven members representing the public, one of whom shall be an active, local building official;
- One general engineering contractor;
- Two general building contractors;
- Two specialty contractors; and
- One member representing a building trades labor organization.

The Governor appoints eleven members of the Board. The Assembly Speaker and the Senate Rules Committee appoint one public member each.

### **Licensing Data**

The Board regulates 41 license classifications and 3 certifications under which members of the construction industry practice their trades and crafts. A license may be issued to an individual, partnership, corporation, or joint venture. All licenses must have a qualifying individual. A qualifying individual is the person listed on the CSLB records who satisfies the experience and examination requirements for a license. Depending on the type of license, the qualifying individual must be designated as an owner, responsible managing employee, responsible managing officer, or qualifying partner on the license records. A qualifying individual is required for every classification on each license issued by the CSLB. The Board also registers persons engaged in the sale of home improvement goods and services.

As of June 30, 1999, there were 280,557 licensed contractors and registered home improvement salespersons. Licenses for contractors are described within three basic branches of contracting business as defined by statute and by the rules and regulations of the Board.



Those basic branches are:

- General engineering contracting (Class “A”), who build infrastructure;
- General building contracting (Class “B”), who build buildings - housing, commercial, office, etc.; and
- Specialty contracting (Class “C”), who often subcontract with As and Bs, such as painters, plumbers, electricians, etc.

Table 1 describes CSLB’s licensed population over the past four years.

**Table 1 – Licensing Data**

<b>LICENSING DATA</b>	<b>1995-96</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>
<b>Total Licensees</b>	<b>276,583</b>	<b>269,044</b>	<b>273,566</b>	<b>280,557</b>
Active	205,250	201,227	206,833	215,494
Inactive	71,333	67,817	66,733	65,063
<b>Total Applicants</b>	<b>26,503</b>	<b>23,763</b>	<b>24,450</b>	<b>25,398</b>
Exams	13,878	12,135	12,610	12,900
Waiver of Exam	7,267	7,021	7,270	7,815
Add Classification/Change Qualifier	5,358	4,607	4,570	4,683
<b>Applications Denied</b>	<b>372</b>	<b>330</b>	<b>380</b>	<b>271</b>
<b>New Licenses Issued*</b>	<b>16,919</b>	<b>14,693</b>	<b>15,361</b>	<b>17,620</b>
<b>Classifications Granted</b>	<b>18,725</b>	<b>16,153</b>	<b>17,030</b>	<b>17,689</b>
General Engineering Contractor "A"	1,127	1,017	1,095	1,091
General Building Contractor "B"	6,916	5,884	6,284	6,493
Specialty Contractors "C"	10,682	9,252	9,651	10,105
<b>Renewals Received</b>	<b>111,550</b>	<b>122,252</b>	<b>116,453</b>	<b>111,501</b>
<b>Certifications</b>	<b>776</b>	<b>556</b>	<b>482</b>	<b>3,293**</b>
<b>Individual Inquiries</b>	<b>1,262,249</b>	<b>1,304,179</b>	<b>1,549,130</b>	<b>2,045,448</b>
Telephone	1,262,249	1,304,179	1,275,912	1,159,518
Internet	N/A***	N/A	273,218	885,930

\* The number of new licenses issued does not match the total number of applicants less the number denied. Some applications are voided and, therefore, are not issued or denied. There are several reasons for voiding an application, including: (1) additional information is requested and the applicant fails to provide it within 90 days; (2) applicant fails the exam three times; (3) applicant fails to appear for the exam, and does not reschedule within 90 days; and (4) applicant fails to appear for the exam the second time after being rescheduled (Business and Professions Code 7074)

\*\* For FY 1998/99 the increase of certifications results from the new Home Improvement Certification program. (Business and Professions Code § 7150.2)

\*\*\* N/A: Not Applicable.

## BUDGET AND STAFF

### **Current Fee Schedule and Range**

The Contractors' Board receives no general fund support, relying solely on fees set by statute. The renewal and original application licensing fees were increased effective January 1994. Before this increase, fees had not been increased since 1982. The Board's current fee structure is as follows:

**Table 2 – Fee Schedule**

Fee Schedule	Current Fee	Statutory Limit
Original Application (Examination)	\$250	\$250
Initial License Fee	150	150
Additional Class	50	50
Replacing the Qualifier	50	50
Home Improvement Salesperson Registration	50	50
Home Improvement Renewal	75	75
Asbestos Certification Application	50	50
Hazardous Substance Removal Application	50	50
Active Renewal (2 year cycle)	300	300
Inactive Renewal (4 year cycle)	150	150
Rescheduling Fee	50	50
Delinquency Fee	25	50% of renewal fee, not to exceed \$25

### **Revenue and Expenditure History**

Application, license and renewal fees compose nearly all the Board's revenue. The Legislature and the Board authorized a \$100 credit against renewal and reactivation fees during fiscal years 1997-98 and 1998-99. The purpose of the credit was to diminish the Board's surplus. Anticipated FY 99/00 of about \$42.4 million are offset by projected expenditures of 42.1 million. Reserves are anticipated to be 18.4 million.

### **Expenditures by Program Component**

During FY 1998/99, the Board spent \$24.6 million on enforcement (59 percent of its total budget); \$6.7 million on licensing (16 percent of its total budget); \$3.7 million on administration, (9 percent of its total budget); \$2.1 million on examination (5 percent of its total budget); and \$1.2 million on public affairs (3 percent of its budget). Department of Consumer Affairs ProRata was \$3.3 million (8 percent of CSLB's budget).

**Table 3 – Expenditures by Program Component**

Program	Expenditures (In Thousands)				Program Share (%)
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	
Enforcement	22,985	23,640	24,044	24,583	59
Licensing	6,205	6,449	6,539	6,671	16
Examinations	1,941	2,015	2,055	2,082	5
Public Affairs	1,165	1,209	1,233	1,249	3
Administration*	3,494	3,628	3,698	3,747	9
Subtotal	35,790	36,941	37,569	38,332	92
DCA ProRata **	3,032	3,368	3,523	3,301	8
<b>TOTAL</b>	<b>38,822</b>	<b>40,309</b>	<b>41,092</b>	<b>41,633</b>	<b>100</b>

\* Administration includes executive staff, Board, support (mail, filing, cashiering), information technology and fiscal services.

\*\* Costs shown in subsequent tables exclude DCA ProRata.

### **Fund Condition**

The Board maintains an analysis of the Contractors License Fund, including reserves, revenues, transfers and expenditures. As of June 30, 2000, the Board expects a reserve of about \$18.4 million. The revenue transfers in fiscal year 1998/1999 result from repayment of a loan to Cemetery and Funeral Board and repayment of a fund transfer to the General Fund in fiscal year 1991/1992, as a result of the Malibu Video lawsuit. CSLB plans major expenditures in fiscal year 2001/2002, including an 8 percent general salary increase.

**Table 4 – Breakdown of Staff and Funds**

Fund Category	Actual (In Thousands)				Projected (In Thousands)	
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
<b>Number of Staff *</b>	<b>450.1</b>	<b>440.8</b>	<b>447.8</b>	<b>464.2</b>	<b>466.6</b>	<b>466.6</b>
<b>Beginning Adjusted Reserve</b>	<b>\$16,836</b>	<b>\$15,355</b>	<b>\$ 19,754</b>	<b>\$10,597</b>	<b>\$18,167</b>	<b>\$18,353</b>
<b>Revenue</b>						
License Fee	9,451	8,606	8,641	8,826	9,296	9,050
Renewal Fee	27,409	30,721	30,213	31,839	29,785	32,030
Renewal Refund	-	-	(10,071)	(10,613)	-	-
Delinquent Fee	373	385	439	364	406	437
Interest	549	740	658	882	945	945
Miscellaneous	79	78	64	50	45	70
Penalties	801	996	906	955	898	898
<b>Total Revenue</b>	<b>38,662</b>	<b>41,526</b>	<b>30,850</b>	<b>32,303</b>	<b>41,375</b>	<b>43,430</b>
Transfers **	(1,854)	2,554	1,085	16,900	975	975
<b>Total Resources</b>	<b>53,644</b>	<b>59,435</b>	<b>51,689</b>	<b>59,800</b>	<b>60,517</b>	<b>62,758</b>
<b>Expenditures</b>						
Personnel Services	21,499	21,336	21,713	21,121	22,306	22,306
Operating Expenses	13,057	14,346	14,999	16,006	15,383	15,383
TOTAL PS & OE	34,556	35,682	36,712	37,127	37,689	37,689
Statewide ProRata	892	917	480	822	822	822
DCA ProRata	3,032	3,368	3,523	3,301	3,400	3,400
Reimbursements	342	342	377	383	253	253
<b>Total Expenditures</b>	<b>38,822</b>	<b>40,309</b>	<b>41,092</b>	<b>41,633</b>	<b>42,164</b>	<b>42,164</b>
<b>Ending Reserve</b>	<b>14,822</b>	<b>19,126</b>	<b>10,597</b>	<b>18,167</b>	<b>18,353</b>	<b>20,594</b>
<b>Months in Reserve</b>	<b>4.6</b>	<b>5.7</b>	<b>3.1</b>	<b>5.2</b>	<b>5.2</b>	<b>5.9</b>

\* The number of staff is lower than the number of authorized staff because of vacancies.

\*\* See page 5 – Fund Condition for explanation of recent transfers

## **LICENSURE REQUIREMENTS**

### **Scope of the Profession**

All businesses and individuals who construct, offer to construct, or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the Board if the total cost (labor and materials) of one or more contracts on the project is \$500 or more. Contractors, including subcontractors, specialty contractors, and persons engaged in the business of home improvement, must be licensed before submitting bids.

The CSLB Licensing Division assures contractors' qualification by reviewing their work experience as part of processing new applications for licensure and additional license classifications. The Division also maintains license records, including renewals, contractor's license bonds and workers' compensation insurance policies.

### **Exemptions to Licensure**

Under the statutes, the definition of the term "contractor" and the relevant scope of work subject to licensure are very broad. Exemptions are limited. The following situations represent nearly all of the exemptions to the CSLB licensing requirements:

- Construction-related improvements under \$500 in value for all labor and materials.
- Employees of licensees whose sole compensation is salary and wages.
- Public personnel working on public projects as employees of the public entity.
- Oil and gas operations performed by an owner or lessee.
- Owner-builders who improve their principal place of residence under conditions that are specified in the Contractors License Law.
- Sellers or installers of products which do not become a fixed part of the structure.
- Security alarm company operators and those who install satellite antenna systems. (Regulated by other agencies.)
- Architects, engineers, geologists, structural pest control operators. (Regulated by other agencies.)

### **Financial Solvency, Insurance and Bonding Requirements for Licensure**

Applicants for licensure must certify to having more than \$2,500 in operating capital. Applicants must also provide proof of workers' compensation insurance, or sign a form that certifies that he/she is exempt from the workers' compensation insurance requirements. In addition, applicants must submit a contractor's bond or cash deposit in the amount of \$7,500. An additional \$7,500 bond is required for each Responsible Managing Employee, or Responsible Managing Officer (RMO). (If, however, the RMO owns 10 percent or more of the voting stock, the additional bond is not required.)

### **Education, Experience and Examination Requirements**

An applicant for licensure must be at least 18 years of age. The person who is acting as the qualifier for the license must have, within the last ten years, at least four years of journey level work experience in the trade for which the license application is submitted. Technical training, completion of an approved apprenticeship program, or a construction-related college or university education can be substituted for not more than three years of the experience requirement. Unless a waiver is applicable, the qualifier must successfully complete an examination process consisting of two parts: (1) a relevant trade test, and (2) a “Law and Business” test. All candidates must complete the open book examination entitled: “*Asbestos: A Contractor’s Guide and Open Book Examination.*”<sup>2</sup>

### **Waiver of Exams**

The Contractors License Law authorizes the Registrar to waive the exam process (both the general business law examination and the appropriate trade examination) under the conditions outlined below:

- Within the five-year period preceding application, the qualifying individual has either passed the relevant exam or has been the qualifier on another license holding the classification for which the application was submitted. (B&P Code §7065)
- For five years of the seven-year period preceding application, the qualifying individual has been associated with a license that is active and in good standing, and meets one of the following conditions: (B&P Code § 7065.1)
  - 1) The qualifying individual has been listed on the CSLB license records as an owner, partner or corporate officer, and is applying for the same trade classification(s) currently held on said license record.
  - 2) Although not listed on the personnel of record, the qualifying individual has been continuously employed in a supervisory capacity by a corporate licensee, and the corporation is applying to replace its qualifier in the same classification for which the employee has provided supervision.
  - 3) The qualifying individual is a family member who has been actively engaged in a licensee’s existing family business and licensure of said person is required in order to continue the family business.

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<sup>2</sup> The asbestos open book exam is a short booklet used to educate applicants with regard to the hazards of handling asbestos. This awareness exam differs from the Asbestos Certification exam that permits licensees to contract for asbestos abatement. The latter is a necessary prerequisite for asbestos removal.

## **Examinations**

Examinations are administered daily at eight testing centers throughout the state by means of a computerized system, called computer assisted testing (CAT). There are currently 45 examinations being administered: 41 trade, 3 certification, and the Law and Business exam.

Table 5 shows the passing rates for each examination, averaged over the last three years. The average passing rates range from 23 percent to 90 percent. The wide range is due in part to examination questions that are outdated and/or overexposed.

The Board has obtained the necessary resources to revise all of its examinations over the next five years. The revision schedule is based on the priority recommendations in the report by Cooperative Personnel Services. As the examinations are revised and new test questions are created, the passing rates are expected to fall within a narrower range.

In order to revise an examination, an occupational analysis must be performed. Information will be gathered from current licensees to determine the critical tasks and knowledge required for safe and competent job performance, in so-called content areas. The results of the occupational analyses will indicate the content areas to be covered on the examinations, and the weight to be given each content area. Following the occupational analyses, testing specialists will work with current licensees in each trade to develop new examination questions and to revise outdated questions.

**Table 5 – Status of Examinations**

<b>Examination Classification</b>	<b>Average Number Admin*</b>	<b>Current Passing Score</b>	<b>Average Passing Rate*</b>	<b>Occupational Analysis Developer**</b>	<b>Date of Last Occupational Analysis</b>	<b>Date of Last Exam Revision</b>	<b>Date of Next Exam Revision</b>
Law and Business	15,301	68%	73%	CSLB	1993	1994	2001
Asbestos Certification	157	62%	59%	HRA	1986	1996	2001
Hazardous Certification	248	60%	66%	HRA	1992	1993	2002
A (General Engineering)	881	68%	85%	CSLB	1998	1998	1999
B (General Building)	6,279	72%	69%	CSLB	1994	1995	2001
C-2 (Insulation & Acoustical)	57	60%	49%	HRA	1986	1992	2001
C-4 (Boiler, Hot Water)	50	62%	62%	HRA	1986	1992	2002
C-5 (Carpentry)	123	75%	23%	CPS	1999	1999	2000
C-6 (Cabinet & Mill Work)	307	67%	62%	DCA	1992	1999	***
C-7 (Low Voltage)	509	72%	53%	PSI	1990	1992	2001
C-8 (Concrete)	345	60%	77%	PSI	1986	1994	2002
C-9 (Drywall)	334	65%	32%	HRA	1985	1994	2001
C-10 (Electrical)	1207	64%	84%	PSI	1986	1993	2001
C-11 (Elevator)	39	72%	85%	CSLB	1998	1998	2000
C-12 (Earthwork & Paving)	174	61%	45%	HRA	1992	1993	2001
C-13 (Fencing)	168	63%	41%	HRA	1985	1993	2002
C-14 (Metal Roof)	14	61%	60%	HRA	1988	1999	***
C-15 (Flooring)	89	63%	40%	PSI	1986	1996	2004
C-16 (Fire Protection)	141	60%	47%	CSLB	1991	1996	2002
C-17 (Glazing)	223	63%	58%	PSI	1992	1993	2002
C-20 (Heat, Vent, AC)	756	74%	65%	PSI	1986	1994	2001
C-21 (Bldg. Moving & Demo)	80	60%	68%	PSI	1985	1986	2001
C-23 (Ornamental Metals)	68	61%	62%	HRA	1986	1993	2003
C-26 (Lathing)	13	64%	27%	HRA	1985	1999	***
C-27 (Landscaping)	1331	66%	38%	CSLB	1991	1993	2001

\* Average of last three fiscal years    \*\* CPS = Cooperative Personnel Services; DCA = Department of Consumer Affairs; HRA = Hoffmann Research Associates.; PSI = Psychological Services, Inc.    \*\*\* Merged with another classification



**STATUS OF EXAMINATIONS (continued)**

<b>Examination Classification</b>	<b>Average Number Admin*</b>	<b>Current Passing Score</b>	<b>Average Passing Rate*</b>	<b>Occupational Analysis Developer**</b>	<b>Date of Last Occupational Analysis</b>	<b>Date of Last Exam Revision</b>	<b>Date of Next Exam Revision</b>
C-28 (Lock & Security Equip)	75	71%	34%	CSLB	1995	1996	2004
C-29 (Masonry)	309	60%	28%	CSLB	1993	1996	2002
C-32 (Parking & Highway)	65	60%	28%	CSLB	1992	1993	2003
C-33 (Painting & Decorating)	1692	70%	71%	PSI	1986	1993	2001
C-34 (Pipeline)	29	60%	26%	HRA	1986	1993	2003
C-35 (Plastering)	168	60%	42%	CPS	1999	1999	2000
C-36 (Plumbing)	774	66%	77%	PSI	1986	1986	2001
C-38 (Refrigeration)	137	72%	68%	PSI	1985	1994	2002
C-39 (Roofing)	752	70%	55%	PSI	1986	1996	2001
C-42 (Sanitation Systems)	43	62%	43%	HRS	1985	1992	2003
C-43 (Sheet Metal)	108	52%	53%	CPS	1999	1999	2000
C-45 (Electrical Signs)	67	72%	71%	CSLB	1985	1986	2002
C-46 (Solar)	10	64%	80%	PSI	1986	1988	2003
C-47 (Gen Manuf Housing)	44	62%	64%	PSI	1985	1988	2003
C-50 (Reinforcing Steel)	25	61%	43%	HRA	1986	1987	2003
C-51 (Structural Steel)	91	73%	68%	CPS	1999	1999	2000
C-53 (Swimming Pool)	126	67%	73%	PSI	1990	1996	1999
C-54 (Tile)	371	60%	75%	HRA	1985	1992	2001
C-55 (Water Conditioning)	29	72%	70%	CSLB	1986	1986	2002
C-57 (Well Drilling)	162	69%	48%	CSLB	1986	1990	2002
C-60 (Welding)	113	66%	51%	HRA	1985	1986	2003
C-61 (Limited Specialty)	978	72%	90%	CSLB	1986	1995	2002

\* Average of last three fiscal years    \*\* CPS = Cooperative Personnel Services; DCA = Department of Consumer Affairs; HRA = Hoffmann Research Association.; PSI = Psychological Services, Inc.

**Time Frame for Licensing**

Given a complete application, with complete and accurate documents and fees, the estimated time for obtaining a license through the examination process is 8 to 9 weeks (4 weeks in

application processing; 4 to 5 weeks for examination process). Under the same circumstances, the estimated time for obtaining a license through the examination waiver process is 2.5 weeks.

**Table 6 – Average Days to Receive License (Original Applications)**

<b>Applications</b>	<b>FY 95-96</b>	<b>FY 96-97</b>	<b>FY 97-98</b>	<b>FY 98-99</b>
<b>Examination Applications</b>				
Application to Examination	64	60	72	76
Examination to Issuance	47	49	48	49
Total Average Days	111	109	120	125
<b>Waiver Applications</b>				
Received date to First Reject	N/A*	40	38	38
Last Reject or Received Date to Issuance	N/A	51	52	57
Total Average Days		91	90	95

\* N/A – Not Available

The processing time for applications includes the time that it takes the applicant to provide the required information needed to complete the application or to make corrections. It also includes the amount of time the applicant takes to send in the requisite bonds, workers' compensation insurance documents, and appropriate fees.

### **Continuing Education/Competency Requirements**

There is no requirement that contractors participate in continuing education as a condition of license renewal. However, the Board has worked on educating contractors through:

- The Board's quarterly newsletter. It includes educational articles;
- Offering contractor forums in partnership with institutions of higher education and California Building Officials (CALBO) throughout the state on issues such as home improvement contracting, contractor law, licensing issues and building codes;
- Joint ventures with professional associations to identify and publicize course work related to seismic retrofitting of buildings; and
- Requiring licensees to take continuing education as a part of a disciplinary action.

### **Reciprocity with Other States**

Business and Professions Code § 7065.4 authorizes the Board to enter into reciprocal agreements with other states for the mutual acceptance of trade qualifications. The Board currently has reciprocal agreements with Arizona, Nevada and Utah. Under these agreements, applicants are required to pass the Business and Law exam administered by each state, but the relevant trade examination for each state will be waived, provided the applicant's contractor's license in the reciprocal state has been in good standing for the previous five years.

The CSLB is an active member of the National Association of State Contractors Licensing Agencies (NASCLA). Effective January of 1999, NASCLA's disciplinary databank went on-line, providing current information on contractors who have been disciplined by one or more of the member states.

## ENFORCEMENT ACTIVITY

### **Enforcement Program Overview**

The Contractors State License Board receives complaints from members of the public concerning all phases of the construction industry. The majority of the complaints, however, are from owners of residential construction involved in remodeling or repair work. In FY 1998/99, the CSLB received over 26,000 complaints.

Historically, the Board's complaint processing functions were handled in fifteen district offices within three regional areas. The entire process, including complaint initiation, investigation, dispute resolution and legal action, was handled separately by each district and region. A 1997 Price Waterhouse study revealed significant inconsistencies within the complaint handling process in the areas of district and staff workload, training and legal action referrals. Unevenness in staffing levels and district workloads served to drive up cycle times. Different approaches to dispute resolution, adjudication and legal actions reduced consistency in the treatment and outcomes for consumers and contractors.

Responding to the Price Waterhouse study, the CSLB has begun a reengineering project for field operations. The reengineering pilot project has been implemented in southern California (Los Angeles, Orange, Riverside and San Bernardino counties). The new program channels all incoming complaints to one location where they are evaluated for appropriate assignment. This process eliminates the problem of fluctuating workload and personnel staffing in local districts decreasing processing times. One anticipated result is shorter times to final complaint resolution.

In the pilot program, when a complaint is received in the Intake and Mediation Center (IMC), it is immediately entered into the CSLB computer database for tracking purposes. Data are available to all enforcement employees, regardless of location, and can be used to assess a licensee's record when determining initial assignment of a pending investigation. The new complaint is subject to "triage" by the IMC staff. Triage reviews the contractor's license status; previous complaints and disciplinary actions. It also examines complaints to determine the seriousness of the allegations, whether the file is ready for investigation, and if the complaint falls within CSLB's jurisdiction. If appropriate, the complaint is assigned to a Consumer Services Representative (CSR) for mediation and attempted resolution.

Complaints involving serious allegations of fraud, prior disciplinary actions or involving contractors with multiple complaints are sent directly to the field for investigation without going through the mediation process. This allows for more effective action against contractors involved in illegal activity, such as financial victimization of elderly citizens. The centralization of the intake process also allows multiple complaints against the same contractor, no matter where they originate, to be assigned to the same investigator(s) for focused regulatory action. Under the new pilot, investigators are being outfitted with necessary equipment, such as laptop computers and cellular phones, to enable them to operate from anywhere in the state, rather than being assigned to one office with arbitrary geographical boundaries.

In January 2000, the Board will review the results of the pilot program and consider full implementation of the new procedures throughout the state.

Also in response to the 1997 study, but separate from the pilot, the CSLB has also eliminated its Northern/Southern geographical regions and implemented a management structure of statewide functions. This new structure will provide consistent enforcement of contractor's license law throughout the state. We have now replaced regional and district supervisors with statewide managers for investigation, fraud, underground economy and legal actions. Statewide management results in greater consistency and higher quality.

Under the statewide management structure, the enforcement program has also formed a unit which has oversight of training, the industry expert program and personnel actions. An ongoing statewide training program for all staff has been implemented and standard training will be given to all new personnel. In addition, ongoing training programs are held for industry experts hired by the CSLB to provide project inspections and reports. All of these classes are held in conjunction with staff from the Attorney General's office to ensure that the training will result in solid investigations and effective legal actions.

The CSLB continues to give the eradication of illegal, unlicensed contractors a very high priority. Those individuals cause a disproportionate amount of damage to the public because they act without obtaining permits, often demand cash for payment and are difficult, if not impossible to trace when inevitable problems occur. As part of this enforcement activity, several geographical areas were targeted by concentrating enforcement staff on stings and sweeps. Stings and sweeps are usually done in partnership with local media. Such exposure helps educate consumers on the dangers of hiring unlicensed contractors, and encourages the unlicensed to become licensed.

We have measured unlicensed activity levels before and after the stings to assess their effectiveness. The results showed that the number of advertisements by unlicensed individuals declined significantly in the months following these actions. In fact, over the last few years the number of reactive complaints against non-licensees has declined in direct proportion to the proactive work done by the enforcement program.

**Table 7 – Complaint Data**

	FY 95-96	%	FY 96-97	%	FY 97-98	%	FY 98-99	%
<b>Complaints Filed (By Source)*</b>	<b>30,806</b>	<b>100</b>	<b>30,967</b>	<b>100</b>	<b>31,863</b>	<b>100</b>	<b>26,076</b>	<b>100</b>
Public	21,960	71	20,892	67	20,691	65	17,802	68
Trade/Professional	2,274	7	1,951	6	1,828	6	1,163	4
State/Local Agencies	127	<1	105	<1	100	<1	71	<1
Initiated by Board	6,445	21	8,019	26	9,244	29	7,040	27
<b>Complaints Filed (By Type)**</b>	<b>32,856</b>	<b>100</b>	<b>32,800</b>	<b>100</b>	<b>32,582</b>	<b>100</b>	<b>27,320</b>	<b>100</b>
Workmanship/Abandonment	10,921	33	10,184	31	9,873	30	9,515	35
Non-Licensee	8,661	26	9,481	29	10,471	32	8,108	30
Other (contract disputes, etc)	13,274	40	13,135	40	12,238	38	9,697	35
<b>Closures through Mediation*** (No Investigation)</b>	<b>13,244</b>	<b>43</b>	<b>12,864</b>	<b>42</b>	<b>12,273</b>	<b>39</b>	<b>11,521</b>	<b>44</b>
<b>Referred to Investigation</b>	<b>17,759</b>	<b>58</b>	<b>17,581</b>	<b>57</b>	<b>18,212</b>	<b>57</b>	<b>14,666</b>	<b>56</b>

\* Complaints by source taken from files opened

\*\* Complaints by type taken from files closed

\*\*\* Mediation and Investigation totals refer to different time periods and may total more or less than 100%.

### **Disciplinary Actions**

In FY 1998/99, approximately 29 percent of the complaints referred to investigation resulted in a formal disciplinary action. Another 6 percent were referred to the CSLB's arbitration program.

When violations of the Business and Professions Code are substantiated, the CSLB has several options for legal action: accusations, licensee citations, nonlicensee citations, or referrals to a District Attorney for criminal prosecution. Legal actions resulted in a total of 791 revocations and 791 suspensions, including those cases where the licensee has not complied with an arbitration award. By operation of law, those licenses are suspended and, if there is no compliance within a year, revoked.

**Table 8 – Investigation Activity**

Investigation Activity	FY 95-96	FY 96-97	FY 97-98	FY 98-99
<b>Investigations Opened</b>	<b>17,759</b>	<b>17,581</b>	<b>18,212</b>	<b>14,666</b>
<b>Disciplinary Action Taken</b>	<b>5513</b>	<b>5723</b>	<b>4475</b>	<b>4252</b>
Accusations *	558	378	447	489
Refer to District Attorney	845	664	1034	1,083
Citations – Licensed	1935	2290	1352	990
Citations – Non-Licensed	2175	2391	1642	1,690

\* The number of complaints referred to accusation; multiple complaints against the same contractor are combined into one accusation.

### **Arbitration Program**

The CSLB offers formal arbitration to homeowners with complaints that meet certain criteria (the contractor has no prior disciplinary action, a good complaint record, and a current and active license). The Board contracts with a private arbitration firm, currently Arbitration Works International, to hear cases that fit the program. Mandatory arbitration is offered to consumers

whose estimated financial injury equals \$5,000 or less. If the homeowner agrees to the arbitration, it is mandatory for the contractor to participate.

The Voluntary Arbitration Program covers consumers with an estimated financial injury of \$5,001 to \$50,000 (this cap was recently raised from a \$25,000 limit). In the Voluntary Arbitration Program, both parties must agree to arbitration. When an arbitration award is made, the contractor has a fixed amount of time to comply. If the contractor does not comply with the arbitration award, the CSLB suspends the license, which bars the contractor from undertaking any new work. After a year, by operation of law, the license is permanently revoked.

**Table 9 – Other Compliance Actions**

Other Compliance Actions	FY 95-96	FY 96-97	FY 97-98	FY 98-99
<b>Other Compliance Actions</b>	<b>5,467</b>	<b>5,774</b>	<b>5,238</b>	<b>6,896</b>
Warning Letters	2,094	2,076	2,409	4,047
Arbitration	1,117	967	962	892
Suspensions (non-compliance)	196	231	156	172
Revocations (non-compliance)	68	93	93	54

### **Citations**

The CSLB has the authority to issue citations for violations of the Business and Professions Code. The typical citation imposes a fine for the violations and contains correction order. A correction order may require the contractor to return to the job or pay financial restitution (usually the cost of completion of the contract) to the project owner.

Citations are issued by CSLB legal action staff and are only referred to the AG if the contractor requests an appeal hearing. Once appealed, the citation is heard by an Administrative Law Judge (ALJ). The ALJ can uphold, modify or reject the citation. ALJ decisions next go to the Registrar for adoption. Under Business and Professions Code § 7090.1, the Board has the authority to suspend the contractor's license if there is noncompliance with the correction order and/or fine. After one year of suspension, if still not in compliance, the license is revoked by operation of law. If the license is revoked, other licenses with the same qualifying personnel are also revoked.

The CSLB also can issue administrative citations for unlicensed activity. This is done when there is insufficient evidence to support a criminal violation.

**Table 10 - Citations**

Citations	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Total Licensed Citations Issued	1,362	1,443	1,226	990
Complied with	704	876	613	308
Noncompliance Actions *				
Suspensions	994	1028	917	616
Revocations	733	646	699	555
Total Nonlicensed Citations Issued	2,027	2,080	1,438	1,690
Complied with	558	603	536	341

\* Noncompliance and Complied with totals do not match Citations Issued totals because they occur in separate fiscal years.

### **Accusations**

If an investigation substantiates violations of law, the matter may be referred for accusation to the Office of the Attorney General. This referral is made if there has been a prior citation, multiple complaints or fraudulent activity. As was the case for citations, the contractor may appeal an accusation. If appealed, the matter is referred to the Office of Administrative Hearings and heard before an Administrative Law Judge who renders a Proposed Decision. This decision is reviewed by the Registrar for adoption. If adopted, the decision becomes a Final Order and enforced against the license.

The enforcement program has also implemented use of the Interim Suspension Order (ISO) for those contractors whose activities constitute an immediate threat to the health and welfare of the public. ISOs require extensive coordination between the CSLB and AG in order to meet the stringent timelines. One recent ISO involved a company in which the wife of a revoked licensee had obtained a new license so that her husband could continue his fraudulent business practices. As soon as complaints were received against the new license, enforcement staff moved to obtain an ISO and ultimately revoked the license.

As part of the Statewide Management function, the enforcement staff has been working closely with the Office of the Attorney General to provide consistent guidelines and training on all phases of the legal action process from investigation through prosecution. Guidelines are currently being developed by staff from both agencies to provide clear direction on such issues as the parameters for determining whether a case should be filed as a citation or accusation.

**Table 11 – Referrals to Attorney General**

Referred to AG's Office	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Accusations Filed *	348	246	199	213
Withdrawn/dismissed	41	20	18	12
Stipulated Settlements	49	66	61	140
License Revocation	239	269	235	182
License Suspension	2	4	6	3

\* Number is less than accusations referred because multiple complaints can be combined into one accusation.

### **Referrals to District Attorney**

The enforcement staff works closely with the District Attorney (DA) in many counties. The majority of investigations referred to the DA involve either unlicensed activity which resulted in financial damage to a homeowner, or cases in which the contractor has ignored administrative citations and continued to operate illegally.

The Board also works with DA's to obtain civil injunctions against contractors. Those actions parallel the disciplinary actions taken against the license. In two major cases last year, a Deputy Attorney General appeared in criminal cases to successfully petition the Superior Court Judge to suspend the license, pending the outcome of the criminal cases.

**Table 12 – Criminal and Civil Actions**

Criminal and Civil Actions Filed	FY 95-96	FY 96-97	FY 97-98	FY 98-99
<b>Criminal or Civil Filed</b>	<b>845</b>	<b>664</b>	<b>1,034</b>	<b>1,083</b>
Nonlicensed	724	602	1,014	1,024
Licensed	121	62	20	59

**Table 13 – Average Cost for Disciplinary Cases (In Whole Dollars)\***

	FY 95-96	FY 96-97	FY 97-98	FY 98-99
<b>Average Cost Per Case Investigated**</b>				
Enforcement Budget	\$18,534,000	\$18,261,000	\$19,061,000	\$19,702,000
Use of Industry Expert Witness	\$1,258,000	\$1,200,000	\$1,111,000	\$1,124,000
Number of Cases Closed	32,877	32,800	32,582	27,320
Average Cost Per Case in Whole Dollars	\$602	\$593	\$619	\$762
<b>Average Additional Cost Per Case Referred to Attorney General</b>				
Cost of Attorney General	\$3,386,000	\$3,189,000	\$2,913,000	\$2,993,000
Office of Administrative Hearings	\$807,000	\$989,000	\$959,000	\$764,000
Number of Cases Closed	296	314	296	215
Average Cost Per AG Case in Whole Dollars	\$14,166	\$13,306	\$13,081	\$17,474
<b>Average Cost Per Disciplinary Case (Case Investigation Cost + AG Cost)</b>	<b>\$14,768</b>	<b>\$13,899</b>	<b>\$13,700</b>	<b>\$18,237</b>

\* All costs are exclusive of ProRata

\*\* Includes investigations referred for accusation as well as citations in which the licensee has requested an appeal hearing.

### **Restitution**

Restitution is made to the consumer under the following circumstances:

- **Mediation process:** Most complaints go to mediation. It is there that the licensee and complainant may agree to finish the job, correct the poor workmanship, or pay the complainant the cost to complete or correct the job.
- **Arbitration:** If arbitration is ordered or agreed to, then restitution may be ordered.



- Citation: If a citation, is issued the licensee may be ordered to correct the work or pay the consumer the costs to complete or correct the job.
- Accusation: If an accusation is filed, the Administrative Law Judge's decision usually orders restitution to the consumer.
- Unlicensed contractor applies for license: If a financial injury is caused by an unlicensed person, the person's name goes into the CSLB's computer records. Any attempt by the unlicensed contractor to become licensed will require resolution of the financial injury.
- Civil judgment: If there is a construction-related civil judgment against the license, the licensee must pay the judgment or post a bond in the amount of the judgment.
- Surety bonds: If there is a violation of the license law, then a claim can be paid by the surety company.

As shown below, in FY 1998/1999, a total restitution amount of \$28,638,000 was received. The accusation and citation amounts were obtained by CSLB as the result of formal disciplinary actions. The arbitration amount represents the total of monetary awards made through the Mandatory and Voluntary Arbitration Programs as previously described. The licensing program through enforcement of Business and Professions Code § 7071.17 obtained the Civil Judgement restitution. This law allows for an automatic suspension of the license for any unpaid civil judgment against a licensee. The suspension can only be lifted if the judgment is satisfied or if a judgment bond is posted. Business and Professions Code § 7071.11 requires the surety companies to report to the CSLB if there is a bond payout.

The following tables provide restitution dollar amounts for the past four years:

**Table 14 – Restitution Received by Consumer (In Thousands)**

Restitution to Consumer	FY 95-96	FY 96-97	FY 97-98	FY 98-99
Accusations	165	117	388	364
Citations	373	701	585	957
Arbitration	1,490	1,656	1,665	1,844
Mediation	11,436	9,776	13,115	8,554
Civil Judgments	11,112	9,861	14,895	12,159
Surety Bonds	5,335	5,720	5,123	4,760
<b>Total Restitution</b>	<b>29,911</b>	<b>27,831</b>	<b>35,771</b>	<b>28,638</b>

### **Complaint Aging**

In FY 1998/99, the median age of pending complaints increased somewhat compared to the two prior years. 84 percent of the complaints were closed within a six-month time frame. The recent reengineering of field operations and the Statewide Management structure described earlier were designed, in part, to speed case processing without sacrificing quality or increasing costs. While early data are incomplete, they suggest faster processing times.

**Table 15 – Complaint Aging Data**

<b>Complaint Aging Data</b>	<b>FY 95-96</b>	<b>FY 96-97</b>	<b>FY 97-98</b>	<b>FY 98-99</b>
<b>Median Age of Pending Complaint Investigated Cases</b>				
Median Age in Days	60	47	43	54
<b>Aging of Completed Complaint Investigation Cases at CSLB</b>				
1-90 days	61%	66%	70%	64%
91-180 days	20%	19%	18%	20%
181 days -1 Year	17%	13%	11%	15%
1 Year +	2%	2%	1%	1%
<b>Aging of Cases Pending in Attorney General's Office</b>				
0-180 Days	50%	50%	57%	54%
181 Days - 1 Year	27%	27%	28%	26%
1 + Years	23%	23%	15%	20%

**Enforcement Satisfaction**

The CSLB has been conducting a consumer satisfaction survey to monitor the effectiveness of its activities since 1993. The questionnaire used by CSLB is similar to the one the JLSRC directed all boards and committees under review to conduct. The 1998 data comes from over 2,000 responses to a survey sent to 4,816 consumers who used CSLB's services.

**Table 16 – Consumer Satisfaction Survey Results**

<b>CONSUMER SATISFACTION SURVEY FOR CONTRACTORS BOARD</b>				
<b>Questions</b>	<b>Responses by Calendar Year</b>			
	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
	<b>Percent Agree Response</b>			
1. The Board contacted me promptly after I filed my complaint.	71	74	75	77
2. Before hiring, I thoroughly checked my contractor's qualifications.	49	50	46	48
3. The procedures for investigating my complaint were clearly explained to me.	66	70	70	71
4. The Board kept me informed of my case's process during the investigation.	56	60	62	64
5. I was treated courteously by the Board's representative.	78	82	82	84
6. My case was processed in a timely manner.	56	60	61	64
7. I understand the outcome of the investigation (whether or not I agree with the action taken).	62	65	66	68
8. The action taken in my case was appropriate.	50	53	53	54
7. I am satisfied with the service provided by the Board.	56	58	61	63

**Cost Recovery**

Pursuant to Business and Professions Code § 125.3, the Board may request the Administrative Law Judge to direct a licensee who is found to have violated Licensing Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In FY 1998/1999 the Administrative Law Judge ordered \$170,166 in cost recovery.

### **Complaint Disclosure Policy**

The Board maintains a website ([www.cslb.ca.gov](http://www.cslb.ca.gov)) and a toll free number (800-321-CSLB) for use by the public for the purpose of obtaining general license information regarding the contractor. The licensee's status and list of past and pending legal actions against the licensee is also made available. The website also provides information on the contractor's bond and workers' compensation insurance.

"Pending legal actions" are reported only when investigative staff has substantiated a complaint, and legal action has been requested.

"Past legal actions" include citations previously issued against the licensee and any disciplinary action in which probation, suspension or revocation has occurred.

Information concerning an arbitration decision is not made available to the public unless the licensee fails to comply with the arbitration award. Failure to comply results first in suspension of the license, then, if the failure persists for one year, the automatic revocation of the license. The Board reports civil judgments against a contractor when suspension is pending or has occurred.

## CONSUMER OUTREACH AND EDUCATION

### *Public Awareness Campaigns*

Consumer outreach teaches consumers how to protect themselves against unlicensed or unreliable contractors. Outreach also seeks to inform consumers about the services available from the CSLB. In 1995, the Board launched an awareness campaign with the slogan, “Get Smart. Get a Licensed Contractor.” Public service announcements were developed and 1,200 radio and television advertisements were purchased and placed in major media markets throughout the State. The buys resulted in an immediate measurable increase in phone calls received, booklets requested and contractor license status inquiries.

In the summer of 1997, the “Get Information to Build On” campaign was conducted in Sacramento County. Research determined public awareness of CSLB services (automated license check, complaint filing, and publication orders). Public awareness about hiring contractors and the consumer protections in contractor law (e.g., limitations on down payments) was also assessed. That research led to public service announcements, billboards and print advertisements, including a 12-page newspaper insert.

Publication requests broke records during the campaign: telephone calls to the toll-free telephone system increased 16 percent in June and 11 percent in July. Calls from the 916 area code (Sacramento area) increased 14 percent in June and 17 percent in July. Complaints filed in Sacramento County increased 33 percent in July.

The 1998 public awareness campaign included public service announcements in eight of the hardest-hit flood disaster regions in California and four consumer forums in partnership with media sponsors and trade associations.

Beginning in 1999, a two-year campaign commenced using data from the census, building and construction industry, Department of Finance and CSLB to develop CSLB target audiences. The data indicate significant concentrations of vulnerable groups, such as elderly homeowners, in Southern California. The Board, therefore, commissioned large purchases of air time on Southern California radio stations. CSLB used radio because it offered the most cost-effective way to deliver the “Get Information to Build On” messages to the target audiences.

Initial results are promising. The numbers of telephone calls to check a license and the number of requests for publications were up in July 1999, compared to the numbers in July 1998. Additionally, internet license checks and publication requests were up in July 1999.

In the first three months of the current public awareness campaign, co-operative advertising (CSLB pays half; vendor pays half) was conducted with promoters of the five largest home and garden shows in California. The Board had a 50 percent increase in the number of consumers requesting publications as compared to publications requested at the same shows without advertising in July 1998.

In addition to the activities conducted through a public relations contractor, consumer outreach and education activities include a number of ongoing programs. CSLB develops and distributes consumer publications and attends Home and Garden and trade shows where the Board messages are of immediate interest to consumers. Further, the CSLB provides speakers for consumer and trade organizations, and partners with governmental agencies to reach consumers and agency constituents.

The CSLB develops and organizes community-based consumer forums throughout the state in cooperative sponsorship with local media. For example, a consumer fair was organized by CSLB and co-sponsored by Telemundo Television in February 1999. The forum was held on Olvera Street in Los Angeles where thousands of Los Angeles residents received helpful information. A similar forum is planned for Glendale in spring 2000.

# **PART TWO**

## **CONTRACTORS STATE LICENSE BOARD**

### **IDENTIFIED ISSUES AND RESPONSES**

Senate Bill (SB) 2036 (Chapter 908, Statutes of 1994) requires periodic legislative review of all boards under the aegis of the Department of Consumer Affairs (DCA). In addition, SB 2036 requires each board to issue a written report to the Joint Legislative Sunset Review Committee (JLSRC) and also applies a specific sunset date to each board unless extended by subsequent legislation.

The first CSLB Sunset Review Report was a comprehensive response to the JLSRC inquiry concerning all aspects of CSLB programs. It was submitted to the JLSRC and DCA in November of 1996. After reviewing the report and receiving public testimony the JLSRC authored legislation, SB 825 (Chapter 813, Statutes of 1997), extending the Board's sunset date to January 1, 2001. In addition, SB 825 limited the subsequent review of the CSLB to certain unresolved issues identified by the JLSRC. They are:

- Legal scope of work for the General Building (B) license classification
- Whether any Specialty (C) Contractor license classifications should be consolidated, redefined or eliminated
- Home Improvement Industry: Consideration of a separate license classification for home improvement contractors and whether the Home Improvement Salesperson registration should be eliminated
- CSLB Asbestos and Hazardous Substance certification programs: Consideration of transferring the programs to other state regulatory agencies
- Recommendation for independent review of CSLB licensing exams and exam waiver criteria
- Reduction of complaint processing time
- Cooperative efforts with local building officials for reporting violations of the Contractors License Law
- Restitution for consumers who have suffered financial losses due to violations of the law by contractors
- Increased costs for the CSLB industry expert witness program
- Uncollected nonlicensee civil penalty assessments

This report presents CSLB's responses to the JLSRC concerning the above unresolved

issues. This report contains ten questions or issues raised by the Joint Legislative Sunset Review Committee. Each issue is expressly stated, followed by a background summary and subsequent report of the Board's action to address the issue.



**Issues I & II:** The Joint Legislative Sunset Review Committee (JLSRC) addressed the following two issues separately in their final recommendations. However, the two issues are presented together in this report because both involve the license classification system and both were handled within the same CSLB review process.

#### **ISSUE I**

**Should a General Building (B) contractor be limited to taking contracts when the job involves three or more unrelated specialty trades?**

#### **ISSUE II**

**Which Specialty contractor license classifications should be consolidated, redefined or eliminated?**

### **CSLB RESPONSE**

#### **BACKGROUND**

The construction industry has always involved certain specialty trades that are unique, but integral components of the building industry. The Contractors State License Board (CSLB) licenses Specialty (C) contractors in more than 39 different classifications, as well as General Building (B) contractors and General Engineering (A) contractors.

From the inception of the CSLB in 1929, until a 1996 California Court of Appeals decision, *Home Depot U.S.A. v. Contractors State License Board*, General Building (B) contractors could not contract for construction services unless three or more unrelated building trades or crafts were involved (except framing or carpentry). For example, a B contractor could not take a contract to do plumbing or electrical work exclusively.

Essentially, the Home Depot decision invalidated the Contractors State License Board regulation related to the General Building (B) license classification, and raised concerns about the health, safety and welfare of consumers. The decision made it legal for a B contractor to take a contract when the job involved a single specialty trade such as plumbing.

Assembly Bill 1455 (1995/96 session) was a response to the Home Depot decision. It contained language, drafted without CSLB collaboration, intended to overturn the effect of the Home Depot decision.

The Governor vetoed AB 1455, requesting that the CSLB submit a proposal, which would include: “. . . only specialty classes which have consumer protection needs.” The JLSRC also commented on specialty license classifications in its report, stating: “The Committee is not supportive of specialty license classifications absent compelling findings that classification protects consumers.” Accordingly, the JLSRC directed the Board to report its findings and recommendations by October 1, 1998.

The Specialty License classification review process undertaken by the Board involved public hearings, an industry survey, CSLB data analysis, and a Specialty Classification

study. Each of these processes focused on whether any license classifications should be modified.

First, the Board appointed a task force comprising the public, the industry and Board Members. The task force thoroughly examined the entire classification system - General Engineering (A), General Building (B) and Specialty (C) contractors. Discussions at a series of public hearings centered on the concepts of redefining, eliminating or consolidating the various license classifications and the impact any such actions would have on the health, safety and general welfare of the public.

Second, the task force surveyed members of 27 construction industry associations and eight city or county building departments, including Los Angeles and San Joaquin Counties. The task force found wide concern at the prospect of deregulating the Specialty license classes. The participants cited a variety of potential health and safety risks to consumers and workers if the demonstrated competency standards for the Specialty trades were nonexistent.

Third, the task force reviewed the CSLB's enforcement complaint data, and gave particular consideration to the potential financial risks to consumers, especially those who contract for home improvement work (remodeling and repairs).

Last, the task force commenced a study of specialty license classifications to decide whether some classifications should be consolidated. To assure that licensees who conduct business in a specific trade have the knowledge, skills and abilities necessary to provide quality services, the task force relied heavily on similarities of the Specialty license classifications.

The task force developed recommendations based on the health, safety and welfare of the public, and referred them to the Board for consideration and action.

## **BOARD ACTION**

The CSLB took separate actions on the General Building (B) contractor issue and the Specialty (C) contractor issue.

### **GENERAL BUILDING (B) LICENSE CLASSIFICATION:**

Changes to the General Building (B) classification flowed from a cooperative effort among CSLB, the Senate Business & Professions Committee, industry representatives, and the Administration. Through the provisions of SB 857 (Statutes of 1997, Chapter 812), Business & Professions Code § 7057 now specifies, in summary, that a General Building (B) Contractor may legally undertake:

- A prime contract or subcontract that involves framing or carpentry;
- A prime contract or subcontract that involves at least two unrelated trades or crafts other than framing or carpentry (framing or carpentry cannot be counted as one of the two unrelated trades or crafts);
- A contract for a single Specialty trade (plumbing, electrical, sheet metal, etc.) provided the work of the contract is subcontracted to a properly licensed Specialty contractor; or

- A contract for the work of any Specialty license classification for which they hold a Specialty license classification.

The redefined scope of work for the General Building (B) classification provided under SB 857 increases the business opportunities for B contractors and assures that specialty work will be performed by a General Building contractor or Specialty contractor who has demonstrated the requisite knowledge and expertise.

#### SPECIALTY CONTRACTOR (C) LICENSE CLASSIFICATIONS:

The Board reviewed and modified seven (17.5 percent) of the Specialty contractor (C) license categories. Using its regulatory authority, the CSLB made these modifications:

- Metal Roofing (C-14) was subsumed into Roofing (C-39) and Sheet Metal (C-43.) *(There are 255 active licensees who hold the C-14 classification. Five of them hold a C-14 only, and 213 of them also hold a C-39 or C-43)*
- Cabinetry and Mill Work (C-6) was subsumed into the Carpentry (C-5) class. *(There are 3,929 active licensees who hold the C-5 classification.)*
- Lathing (C-26) was subsumed into the Plastering (C-35) class. *(297 active licensees hold the C-26 classification. 2,034 active licensees hold the C-35 classification)*

Additionally, the Board decided it is not in the best interest of consumers to eliminate any Specialty license classifications, considering the results of the health and safety survey, public testimony, and potential financial risks to consumers.

CSLB's review of the licensing system resulted in the Board moving to restructure about 25 percent of its classifications, certifications and registration program. The regulation process for each of the Specialty license modifications is complete. On June 29, 1998, the Board sent a letter to the Governor outlining the final results of the Board's review of the its licensing classification and certification system.

### **ISSUE III**

**Should there be a separate license classification for home improvement contractors, and should registration of home improvement salespersons be eliminated?**

#### **CSLB RESPONSE**

##### **BACKGROUND: HOME IMPROVEMENT CERTIFICATION**

The JLSRC's initial sunset review questionnaire asked about home improvement contractors. In response, the board gathered data showing that the majority of financial injury and consumer complaints filed with the CSLB are attributable to home improvement construction projects. Home improvement projects include repairing, remodeling, altering, converting, modernizing or adding to a residential property. For example, home improvement could include work on a residential driveway, swimming pool, fence, porch, kitchen, or bathroom.

CSLB appointed a task force, including industry, Board members and public representatives to review the possibility of establishing a classification or certification for contractors who perform home improvement work. The task force determined that although the prime contractor (often a B contractor) is held responsible for consumer complaints under the law, the reason for the complaint could be due to the work performed by a subcontractor (roofing, plumbing, painting, etc.) hired by the prime contractor. Further, the task force concluded that it is common for a Specialty contractor to be the prime contractor on home improvement projects.

##### **BOARD ACTION: HOME IMPROVEMENT CERTIFICATION**

The Board adopted a proposal to require certification of all prime contractors and subcontractors who perform home improvement work. The Home Improvement Certification plan originally submitted to the legislature would have required home improvement contractors to:

- Pass an open book exam dealing with selected topics on the home improvement business, AND
- Fulfill a continuing education requirement, OR
- Post a blanket payment and performance bond in the amount of \$250,000.

However, certain components of the Home Improvement Certification plan met with opposition. The final version contains only the open book exam requirement, effective July 1, 2000 (Statutes of 1997, Chapter 888). The new certification examination and study guide have been mailed to all licensees. Contractors can also take the examination on the Internet, which is scored in real time. It is anticipated that approximately 200,000 contractors will become certified by July 1, 2000.

**BACKGROUND: ELIMINATION OF HOME IMPROVEMENT SALESPERSON REGISTRATION**

Under specified conditions of the Contractors License Law, the sale of home improvement goods and services by Home Improvement Salespersons (HIS) is illegal unless such individuals have registered with the CSLB.

The JLSRC's initial sunset review questionnaire asked about elimination of registration of home improvement salespersons. In response, the Board showed evidence that very few legal actions are pursued against home improvement salespersons even though CSLB has the authority to discipline them. This is because the law and CSLB hold the contractor responsible for the actions of the HIS who sells the job. Even without registration CSLB would maintain authority to enforce against individuals who violate the law.

CSLB sponsored AB 771(Margett) in the 1995/96 session to repeal the HIS registration as needless regulation. However, the HIS repeal language was dropped due to opposition from a number of consumer groups. There was concern that protections enacted in 1994 would be nullified by the repeal of the HIS registration requirement. Specifically, the 1994 legislation amended section 7153 of the Business & Professions Code to preclude a contractor from taking a security interest under a home improvement contract unless the salesperson is duly registered by the CSLB.

**BOARD ACTION: POSTPONE REPEAL OF HOME IMPROVEMENT SALESPERSON REGISTRATION**

The Board recommends that the pursuit of legislation to repeal the HIS registration requirement be postponed while the issues related to security interests and home improvement contracts undergo legislative review.

## **ISSUE IV**

### **Should the Board continue to certify and regulate asbestos contractors or those involved in the removal or remedial action of hazardous substances?**

#### **CSLB RESPONSE**

##### **BACKGROUND: CERTIFICATION & REGULATION OF ASBESTOS CONTRACTORS**

The JLSRC's initial sunset review questionnaire asked about certification and regulation of asbestos contractors. In response, CSLB noted that it does not have the expertise to determine whether a contractor has violated laws pertaining to asbestos. While CSLB has the authority to discipline contractors who violate such laws, it must rely on the investigations and testimony of Department of Occupational Safety and Health (DOSH) experts or officials from a local health agency. Currently, asbestos contractors must complete applications with both CSLB and DOSH before undertaking asbestos-related work.

##### **BOARD ACTION: CERTIFICATION & REGULATION OF ASBESTOS CONTRACTORS**

The Board recommends that the responsibility for the asbestos certification program be transferred to DOSH, and forwarded proposed language to DOSH. DOSH raised a number of issues that legislation must address before transferring the asbestos certification. CSLB will continue to work with DOSH to resolve their concerns in order to transfer the program, eliminate the requirement that applicants apply to both agencies and allow asbestos contractors to enjoy "one-stop shopping." CSLB intends to continue to issue disciplinary actions against contractors who violate asbestos laws, pursuant to investigations and findings of fact by DOSH.

##### **BACKGROUND: CERTIFICATION & REGULATION OF HAZARDOUS SUBSTANCES REMOVAL**

Legislation enacted in 1986 (Statutes of 1986, Chapter 1443) gave CSLB responsibility for issuing a certification exam to contractors who engage in the removal or remedial action of specified hazardous substances (HAZ-MAT). In addition, CSLB has the authority to discipline contractors who perform this work without holding HAZ-MAT Certification.

The JLSRC's initial sunset review questionnaire asked about HAZ-MAT certification. In response, CSLB noted that it has the authority to discipline, but does not have the expertise to determine whether a contractor has followed proper procedures in the removal or remedial action of HAZ-MAT substances.

Initially, the Board recommended that the responsibility for the HAZ-MAT Certification be transferred to the Department of Toxic Substances Control (DTSC) because the agency has the necessary expertise to regulate the program. However, DTSC opposed the recommendation because the agency has no investigative staff, no mechanism to process applications, and no method to test for the HAZ-MAT Certification. Currently, the DTSC holds property owners responsible for proper disposal procedures. Typically, the property owners hire registered engineers to develop disposal plans and oversee the disposal work. In cases of improper disposal of the hazardous materials in question, the DTSC notifies

the owner that additional work is needed. The DTSC performs no other enforcement action. It appears that the public interest would not be served by transferring the HAZ-MAT Certification Program at this time.

**BOARD ACTION: CERTIFICATION & REGULATION OF HAZARDOUS SUBSTANCES REMOVAL**

The Board recommends it continue to administer the program as noted in the CSLB Registrar's June 16, 1998, letter to DTSC

## **ISSUE V**

**Should an independent analysis be conducted on the examinations required by the Board to obtain a contractor's license, and to determine when a waiver of the examination requirement may be appropriate?**

### **CSLB RESPONSE**

#### **BACKGROUND**

Based on the statistical data provided by the CSLB in the initial sunset review, the JLSRC stated that the pass rates for some of the licensing exams are too high and raised concerns about the waiver of the exam. The Committee recommended: 1) that the exams be analyzed by an independent expert to assure their validity; and 2) to study the exam waiver process and report back to the JLSRC on whether it is appropriate to waive exams.

#### **BOARD ACTION**

The Board agreed with the JLSRC's recommendation that an independent analysis of the Board's examinations and examination waivers be performed. Cooperative Personnel Services (CPS) has completed the analysis of CSLB's examinations. CPS is still analyzing the Board's exam waiver program. The CSLB expects the analysis to be complete before the end of the year.

#### **BOARD ACTION: ANALYSIS OF CSLB'S EXAMINATIONS**

The CPS auditor concluded that CSLB's examinations consistently meet or exceed professional standards for test development. The auditor observed that due to limited resources, the Board had not been able to update the occupational analyses for many of its licensing examinations. In addition, the Board had not been able to replace overexposed test questions in the more frequently administered licensing examinations.

To address the issues raised in the audit report, the legislature authorized the necessary funding for the additional testing specialists. The Board has set a schedule for conducting occupational analyses and updating examinations for each classification over the next five years. The Board will maintain a schedule whereby a new occupational analysis for each classification will be conducted every five years, subject to continuing availability of resources.

To minimize overexposure of test questions, the Board will utilize additional testing personnel to conduct periodic test question development workshops with subject matter experts. Maintaining an ongoing examination development schedule will enable the Board to increase the size of its question pools, and to ensure that examinations remain consistent with current practice in between occupational analyses.



## **ISSUE VI**

### **Should the Board shorten the time frame for processing complaints and the completion of investigations?**

#### **CSLB RESPONSE**

##### **BACKGROUND**

The JLSRC stated in its final recommendations that “About 60 percent of complainants surveyed . . . believe that their cases were processed in a timely fashion. . . [However] a number of investigations take from one to two years to complete before any legal action is taken.” In response, the Board outlined some of the causes for delay in the complaint process. It was particularly noted that the rash of natural disasters between 1994 and 1996 had resulted in processing delays due to the increased number of complaints and their complexity. Regardless, the Committee directed the Board to provide recommendations on reducing complaint processing and investigation time.

##### **BOARD ACTION**

A prominent goal of the Board’s strategic plan is the fast and effective resolution of consumer and contractor disputes. The Board is pursuing this goal by:

- Re-engineering dispute resolution, since January 1999, the Board has been piloting a re-engineered dispute resolution process to reduce cycle times, increase consumer and contractor satisfaction, and reduce the cost per complaint.<sup>3</sup> The new process involves centralizing the initial processing (intake) and mediation procedures that were previously performed in decentralized district offices. Prior to this districts had inconsistent workloads because of the mobile nature of construction. By consolidating resources, construction complaints will be addressed more quickly and consistently because shifting workload can be managed more efficiently.
- Redefining Performance measures related to dispute resolution and establishing baselines and performance targets.

##### **BOARD ACTION**

Another important goal of the Board’s Strategic Plan is the fast and effective prosecution of Contractors License Law violations.

- Since March 1999, the Board has been piloting a re-engineered investigation process that relies upon a decentralized mobile investigative staff that is not hindered by dispute resolution workload or geographic boundaries. Through centralized initial processing, cases requiring investigation of Contractors License Law violations are getting to investigators sooner and are being assigned to the most appropriate resources. Better, faster and more efficient investigations that result in more effective responses to violations are anticipated.

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<sup>3</sup> The re-engineering pilot is limited to four Southern California Counties – Los Angeles, Orange County, Riverside and San Bernardino. The Board will review the results of the pilot at its January 2000 meeting with an eye toward statewide implementation.

- Performance measures related to investigation have been refined, baselines established and performance targets set.<sup>4</sup>
- By eliminating time spent by investigators on dispute resolution and focusing these resources on investigation of unscrupulous contractors, the Board anticipates and expects improved results in the form of increased legal actions.

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<sup>4</sup> The Board has designed its measures in such a way that its organizational units are encouraged to work cooperatively to achieve high level strategic goals.

## **ISSUE VII**

### **Should there be more of a cooperative effort between the Board and local building officials to improve reporting of violations of the Contractor's Act?**

#### **CSLB RESPONSE**

##### **BACKGROUND**

The JLSRC's initial sunset review report noted that CSLB receives very few complaints from state or local agencies. The JLSRC commented that: "In many instances however, building officials are not aware of laws pertaining to contractors. . ." The Committee suggested that the Board establish a "contact program" with building officials.

The Board responded that it has long-standing ties with building officials. Since 1994, the law has required that Board composition include one active building official. In addition, CSLB and the California Building Officials (CALBO) have had a liaison committee for a number of years. Importantly, it was noted that CSLB frequently cooperates with building officials to discipline licensees for violating building codes.

##### **BOARD ACTION**

The Board agrees that CSLB and building officials should cooperate to enforce the license law and building codes, and increase communication with CALBO. In November 1998, the Board held a roundtable meeting with CALBO leadership in Riverside to discuss better communications and how the Board could better serve Building Officials. The meeting resulted in CSLB putting together a pamphlet of frequently asked questions for Building Officials that is available as a pamphlet on our website. The roundtable discussion also resulted in a cooperative effort between the Board and CALBO to jointly sponsor legislation that will make it easier for building officials to verify contractors' workers' compensation insurance.

The Board has actively worked with the management of both CALBO and International Conference of Building Officials, as well as with local building departments, in order to provide better building code enforcement. CSLB enforcement staff in various geographical locations throughout the state has been attending the local building official meetings on a quarterly basis to maintain this liaison work.

This increased cooperation is also listed as an objective in the Board's 1999/2000 Strategic Plan. To meet this objective, roundtable discussions have been held in various locations throughout the state, in conjunction with other Board meetings, to identify ways in which CSLB and CALBO members can cooperate to provide better enforcement of building codes. In addition, letters were sent by CSLB enforcement supervisors throughout the state to their local building departments detailing areas of mutual assistance, such as direct telephone numbers to contact CSLB staff, waiving of fees for documents and witness appearances by both agencies, attending the other agency's staff meetings when requested and providing assistance with contractors who ignore local requirements. The enforcement staff as well as CSLB as a whole will continue to build

on this relationship in order to provide more effective regulation of contractors who do not comply with local codes.

## **ISSUE VIII**

**Should the state consider other alternatives to providing restitution to the consumer, such as requiring performance bonds, or establishing an insurance or recovery fund?**

### **CSLB RESPONSE**

#### **BACKGROUND**

The JLSRC noted that too frequently consumers are unable to recover the amount of money necessary to rectify problems when contractors abandon a project or perform work poorly. The Committee pointed out that 15 states administer various recovery funds for the benefit of consumers and recommended that the Board consider making other methods of restitution available to consumers in California.

During the Board's public hearings about the home improvement industry, the discussion before the Board particularly emphasized consumer restitution as well as other alternatives such as mandating payment and performance bonds and/or increasing the penal sum of the contractor's license bond. Throughout the discussions, industry participants expressed concern that these restitution methods would significantly increase the cost of doing business as well as consumer costs, and create a barrier to entry for new license applicants. Despite these concerns, the Board continued to work on these issues.

#### Methods of Ordering Restitution

As presently structured, the CSLB has only limited methods of providing restitution to consumers who are financially injured by licensed contractors. When CSLB is successful in proving a violation of Contractors' License Law and has demonstrated that the violation led to a particular financial injury, the Registrar may order restitution for the consumer. If the contractor fails to pay the ordered restitution, the Registrar can take action against the contractor's license, suspending it until payment is made and revoking it, if there is no payment after one year.

The same process can be used when a consumer sues the contractor and is awarded a judgement in civil court or when the consumer prevails in an arbitration proceeding. If the contractor fails to pay, the Registrar can take action against the license.

These methods of restitution rely on pressure against the license. They are of limited utility if the contractor leaves the profession, goes to work for someone else, or files for bankruptcy. Manifestly, the Board's leverage for restitution is limited.

## Bonds

One way of compensating for financial injury uses the license bonds. Today each licensed contractor is required to carry a \$7,500 surety bond (\$10,000 for pool contractors). The limitations of this bond are well documented:

- The bond pays out only upon a demonstrated violation of contractor's license law;
- A contractor in trouble with one consumer is often in trouble with others. Multiple claimants against the same bond reduce the amount available to each consumer. When the bond is exhausted no compensation is forthcoming; and
- The bond only covers work itself, not secondary damage caused as a consequence of a contractor's poor workmanship or by negligence on the work site.

Over the years, CSLB has examined ways to increase bond coverage for consumers. The Board originally proposed requiring payment and performance bonds in the home improvement market in the legislation creating the Home Improvement Certification. As a result of legislative opposition, this proposal was not enacted.

## Commercial General Liability Insurance

The JLSRC specifically asked about the viability of insurance as part of CSLB's consumer protection strategy. In January of 1999, the Board began to examine the value of licensed contractors carrying Commercial General Liability insurance (CGL). Our first workshop, held in March 1999, demonstrated that CGL would close a gap in CSLB's consumer protection strategies by providing insurance coverage for consequential damages. CSLB held a second workshop to explore the cost and availability of CGL. Surprisingly, representatives of a number of insurance companies opposed mandating CGL. These insurance representatives were concerned that mandating CGL would require the industry to create an uninsured contractors' pool.

As an alternative to mandating insurance, CSLB is exploring the feasibility of mandating disclosure of each contractor's CGL status. Under this proposal, the CSLB would monitor and disclose to the public whether the contractor carries a minimum CGL policy. This alternative is being evaluated to determine if it would provide reasonable consumer protection without creating a barrier to licensing. Concern has also surfaced about disclosure. Some fear the mere act of disclosure would draw more suits and drive up costs.

## Recovery Funds

CSLB continues to examine the approaches other states have taken to address financial injury to consumers. A number of states have adopted recovery funds. Some of these funds are very specific. For example, Indiana's recovery fund covers only the work of plumbers, while New Jersey's plan covers only new homes. Some are for the benefit of homeowners only and other funds are available to unpaid subcontractors and material suppliers as a substitute for

lien rights. Most of the recovery funds are funds of last resort, requiring legal work after the consumer obtained a judgement. Moreover, the Hawaii, Massachusetts, Florida and Utah lien recovery funds stated that the process of recovering from the fund was burdensome, complicated and could have significant attorney costs. The poor and uneducated have a difficult time collecting from the fund. Most recovery funds are from fees that bear no relationship to the business volume or risk of a given contractor. The fees to support the fund come from reputable contractors. No fund has a successful method of recovering from the contractor after a payout. To replenish recovery funds, states relied on after-the-fact strategies ranging from reassessing fees to waiting for next year's assessments.

This year, Assemblyman Honda introduced Assembly Bill 742 to create a lien recovery fund administered by CSLB. Legislative Counsel draft language for the Honda bill would create a fund available to laborers, subcontractors and material suppliers who had acquired lien rights on California homes even though the homeowner paid the prime contractor in full. Under the legislative counsel draft, each California contractor certified for home improvement work would pay \$200 a year. CSLB anticipates that this would result in a fund of about \$50 million a year. Since many lien disputes are settled without CSLB involvement, CSLB has no perspective on whether this amount would be enough or too much. CSLB has initiated a review of our licensee pool to determine how often (and for how much) lien disputes result in a homeowner paying twice for home improvement work.

## **BOARD ACTION**

The Board has directed the Registrar and staff to work with industry and other interested parties for the purpose of developing a workable solution to the problem of financial injury to consumers. CSLB is working with interested parties to better protect consumers by creating a Home Improvement Protection Plan (HIPP) for the year 2000. Below are the key elements:

- New Bond: CSLB is working with a group of California sureties to create a new bond that would supplement the present \$7,500 bond. The new \$7,500 bond would be carried by home improvement contractors and would be available only to homeowners, thereby doubling bond protection for homeowners.
- New Civil Penalty: CSLB is proposing a new civil action to allow material suppliers to seek the same 2 percent per month penalty from contractors as presently available for subcontractors under the Business & Professions Code section 7108.5. The theory being that if an interest payment is available to material suppliers, the suppliers will be more likely to file suit against the contractor rather than assert lien rights against a homeowner.
- New Disclosure Requirement (Insurance): As discussed above, consequential damage is not generally covered under CSLB law. This proposal would allow the Board to disclose whether or not the contractor carries general liability insurance and would underscore the value of insurance to the consumer.

- New Notices: Effective consumer protection almost always relies on getting information to the consumer in a way that he or she can understand. CSLB is working on a series of proposals to make our notice requirements more useful to consumers.
- Revision of CSLB's Criminal Conviction Review Process: CSLB is developing a comprehensive approach to reviewing our applicants and licensees criminal history. This review is particularly necessary given the introduction of the Home Improvement Certification program. CSLB is concerned that the certification may appear to constitute an approval of the individual's suitability for home improvement work. The new review process will include a fingerprint provision.



## **ISSUE IX**

**It is unclear why the expenditure for use of industry expert witnesses to investigate the majority of licensee complaints has increased substantially, and whether this component of the enforcement program has helped the Board effectively use enforcement resources.**

### **CSLB RESPONSE**

#### **BACKGROUND**

The JLSRC noted from the initial sunset review report a sizable increase in the expenditures for the Industry Expert program. Specifically, between fiscal year 1992/93 and fiscal year 1995/96, expenditures grew from \$550,000 to \$1.3 million. The issue was eventually referred to the Senate Budget Committee, which accepted the CSLB's explanation that the increases were largely attributable to the number and complexity of the cases resulting from natural disasters.

In addition, CSLB clearly stated that the Industry Expert program is essential to the enforcement program in order to establish workmanship violations, as well as determine the current and justifiable costs for corrective work.

Industry Expert (Millions)	FY 95/96	FY 96/97	FY 97/98	FY 98/99
<b>Total Costs</b>	<b>\$1.3</b>	<b>\$1.2</b>	<b>\$1.1</b>	<b>\$1.1</b>

#### **BOARD ACTION**

For a variety of factors - many well publicized - the dollar costs of home remodeling contracts have increased exponentially. We now see complaints where the remodeling costs exceed the prices for many new homes of 5-10 years ago. Accordingly, the Board's use of industry experts is more valuable than ever. Presently, the Board contracts with an expert to assist the investigator approximately 4,000 times annually. We cannot envision another resource that would be as credible and cost-effective.

As complaints to the Board became more sophisticated, the Board's reliance on the industry experts has increased. To assure the public that industry expert are necessary, the Board has implemented stricter cost controls on the Industry Expert program and new procedures, effective May 1997. Industry expert charges exceeding \$300 must be submitted with a justification for the charges and be approved. Approval depends on: (1) the number of complaint items, (2) the complexity of the evaluation, (3) the specialty involved, (4) the type of testing involved, (5) the required distance of travel, and (6) the urgency of the case for which the inspection is required.

Under long-standing CSLB procedure, no industry expert charges exceeding \$500 will be approved without justification and approval prior to the inspection services.

The stricter cost controls have stabilized the expenditures for the program. However, as the enforcement program develops its present efforts to maximum potential, costs for this program should increase. For instance, the Board has increased its efforts to investigate and prosecute contractors for illegal actions by obtaining forensic auditors to provide expert reports and analysis in complex cases involving financial diversion. The role of the Industry Expert as an adjunct to the investigator remains indispensable to the effective enforcement of workmanship issues, code violations and financial fraud.

It should be noted that the cost for experts not only covers the initial industry expert job inspection and report, but it also covers the cost of any re-inspection if the contractor corrects and/or completes the job, as well as testimony in disciplinary hearings.

## **ISSUE X**

### **Should the Franchise Tax Board (FTB) be granted legislative authority to collect fines that have been assessed against unlicensed contractors?**

#### **CSLB RESPONSE**

##### **BACKGROUND**

The JLSRC noted during the sunset review process that CSLB only collected approximately 10 percent of the penalties assessed for license law violations. At the time of reporting, the unpaid assessments totaled more than \$2 million for licensees and more than \$6 million for nonlicensees. The Committee directed the CSLB to explain the inability to collect the civil penalties and to provide the JLSRC with a recommendation for improving collections. Ultimately, the issue was limited to the collection of the nonlicensee penalties.

A large number of nonlicensees who owe penalties do not have attachable assets and cannot be identified by the techniques available to collection agents. The CSLB is currently under contract with two collection agencies. One agency handles collections for penalties for the North, and the other handles the penalties issued in the South. The collection agency fees range from 5 percent (30 days to collect) to 30 percent (90 days to collect). If a civil judgment is obtained to enforce collection, the agency fees increase to 50 percent and 35 percent respectively.

A brief overview of the collection agency data for calendar year 1997 reveals that \$1.5 million in nonlicensee penalty referrals resulted in an average collection rate of approximately 13 percent. According to collection agency staff, most of the successful collections are accomplished within six to nine months of referral. However, the fact that debts are reported to credit reporting agencies has resulted in some payments being made several years after referral.

The concept of using FTB to collect delinquent penalties was first examined by the Board when AB 255, introduced in 1995, sought the authorization for FTB to collect outstanding debts for all state agencies under specified conditions. The amended 1996 bill (Statutes of 1996, Chapter 1001) limited its scope to FTB collections for the Student Aid Commission.

In recent years FTB has been authorized to collect debts for an expanded number of state and local government agencies. They collect fines and penalties for the Department of Labor Standards Enforcement, delinquent motor vehicle registration fees for the Department of Motor Vehicles and delinquent accounts for the Student Aid Commission. In the original legislation, CSLB was included in the list of agencies that FTB was authorized to collect debts for, but the final version amended CSLB out of the bill.

##### **BOARD ACTION**

The Board directed staff to work with FTB on developing a feasibility study to find out whether or not FTB should begin collections for CSLB. For the CSLB feasibility study, the records of approximately 10,000 nonlicensee penalty assessments totaling \$11 million were sent to FTB to ascertain how many of them could be collected under the FTB

system. These assessments represent all of the uncollected nonlicensee citations, including those that were referred to private collection agencies but for which there has been no collection activity.

The initial results of the FTB study are summarized as follows:

**Prior Assessments, January 1, 1999 - December 1, 1999:**

Initial collectable amount: \$1 million (1,951 penalty assessments)

FTB costs to collect, first year: \$225,000

**Ongoing Assessments, January 1, 2000 - December 31, 2002:**

Assumed amount annually: \$2.5 million

Projected return rate: 16 percent (approx.)

Projected costs to collect: 50 percent (approx.)

**CONCLUSION**

Considering the FTB estimated rate of collection at 16 percent, there is only a 3 percent difference between the FTB and private collection agency rates. Given the comparative analysis, including the FTB projected costs, there does not appear to be a compelling financial incentive to pursue legislation at this time.

However, it is notable that the legislation expanding FTB authority to include collection of penalties also included the authority to utilize all of the powers of the FTB in the collection of such debts. This authority, in and of itself, may represent a considerable deterrent to those individuals who may otherwise risk the penalties of unlicensed activity. Since the make-up of the Board is currently in flux, there has been no policy dialogue relative to this point.